



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
32 OLD SLIP, 26<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD  
DIRECTOR  
NEW YORK OFFICE

March 9, 2015

Dr. Christopher Brown  
Superintendent of Schools  
West Genesee Central School District  
300 Sanderson Drive  
Camillus, New York 13031

Re: Case No. 02-14-1479  
West Genesee Central School District

Dear Dr. Brown:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the West Genesee Central School District. The complainants alleged that the District discriminated against their son (the Student), on the basis of his disability, by failing to review the Student's Diabetes Medical Management Plan (DMMP) and Emergency Care Plan (ECP) with the Student's school bus driver from West Genesee Middle School (the School) at the beginning of school year 2014-2015, as required by the Student's Section 504 Plan (Allegation 1). The complainants also alleged that XXXXXXXXXXXXXXXXXXXX discriminated against the Student, on the basis of his disability, by refusing to confirm that the Student's blood glucose levels were safe before the Student boarded the school bus at the end of each school day, as required by the Student's Section 504 Plan for school year 2014-2015 (Allegation 2).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public elementary and secondary education

system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires a recipient to provide a free, appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction. The provision of a FAPE is the provision of regular or special education and related services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met. Further, the regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1)(iii), states that a public entity may not, on the basis of disability, provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or reach the same level of achievement as that provided to others.

In its investigation, OCR interviewed the complainants and District staff. OCR also reviewed documentation that the complainants and the District submitted. OCR made the following determinations.

The Student was enrolled in the 6th grade at the School during school year 2014-2015; and, had a Section 504 Plan, dated October 29, 2013, requiring the provision of related aids and services for his disability (Type 1 diabetes). The first day of school for students enrolled in the District for school year 2014-2015 was September 2, 2014.

With respect to Allegation 1, the complainants alleged that the District discriminated against the Student, on the basis of his disability, by failing to review the Student's DMMP and ECP with the Student's school bus driver at the beginning of school year 2014-2015, as required by the Student's Section 504 Plan. The complainants asserted that as of September 3, 2014, the second day of school, the Student's bus driver was not aware that the Student had diabetes and did not have a copy of the Student's DMMP or ECP.

The Student's DMMP is an eight-page document completed by the Student's physician that includes contact information, recommendations for hypoglycemia and hyperglycemia treatment, and insulin therapy. The Student's ECP is a four-page document that includes contact information, hypoglycemia and hyperglycemia symptoms, and treatment recommendations. The Student's Section 504 Plan for school year 2014-2015 states: "The [Student's] DMMP and [ECP] will be reviewed with all staff at the beginning of each year or at any time when new staff is working with [the Student] on a regular basis."

The District does not have a written policy or procedure outlining the process by which the District is to provide students' DMMPs and ECPs to the Transportation Department or review these with bus drivers. The District's Assistant Superintendent for Human Resources (the Assistant Superintendent) sent an electronic mail message (email) to District nurses, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX dated September 3, 2014, in which she reminded the nurses that ECPs must be reviewed annually and forwarded to the Transportation Department for placement on the school buses. The email further states that the District would like to have ECPs on the buses prior to the start of the school year so that bus drivers are fully aware of any medical conditions for their students. The Assistant Superintendent noted that some of this information had not been provided to the Transportation Department as of September 3, 2014; and, reminded the nurses that the District provides 10 days during the summer for nurses to collect ECPs to have them ready for the opening of school.

The Principal stated that it is the XXXXXXXX responsibility to collect and review students' ECPs and DMMPs with parents; and, to provide copies of the ECPs and DMMPs to the District's Transportation Department prior to the first day of school. OCR determined that there is no policy or procedure in place for reviewing ECPs and DMMPs with the Transportation Department or with staff. At the end of each school year, the District elementary schools forward ECPs to XXXXXXXXX for those students enrolling in the School for the next school year.

The XXXXX acknowledged to OCR that she had no contact with the Transportation Department prior to the start of the school year. She stated that she does not send an ECP to the Transportation Department until after she has reviewed it with a student's parent/guardian to determine if there are any changes to be made on the ECP; and, this typically does not take place until the start of the school year. The XXXXX stated that after reviewing the Student's ECP with the complainants during a meeting on September 3, 2014, she faxed the Student's ECP for school year 2014-2015 to the Transportation Department; she could not recall if she also forwarded the Student's DMMP. Following the meeting on September 3, 2014, the Principal confirmed that the Transportation Department had received the ECP from the XXXXX that day. The Principal did not recall inquiring about the Student's DMMP, because it is typically attached to the ECP. The District did not provide any information to indicate that the XXXXX or any other staff reviewed the ECP or DMMP with the bus driver.

Bus drivers in the District attend a "refresher" every August and January to review policies, procedures and practices related to student safety, discipline, and medical emergencies. At that time, a nurse is available to generally discuss allergies, diabetes, and other potential medical emergencies, but specific students' ECPs are

not reviewed with the bus drivers at this time. Bus drivers also maintain “bus binders” that include documentation pertaining to students on their routes, including ECPs that the Transportation Department receives at the beginning of the school year. The Student’s bus drivers informed OCR that they review the information in their binders, but no one from the District specifically reviews students’ ECPs with them; if they have questions regarding a student’s ECP, the driver can contact a supervisor or the nurse. OCR reviewed the bus binders for the regular and late bus drivers for their respective routes for school year 2014-2105. Both included copies of the Student’s ECP for school year 2014-2015, dated September 3, 2014; the Student’s DMMP for school year 2013-2014, dated September 2, 2013; and the Student’s Section 504 Plans for school years 2013-2014 and 2014-2015. The binders did not contain a copy of the Student’s DMMP for school year 2014-2015. OCR determined that because the Student’s DMMP for school year 2013-2014 was a year old, it contained outdated information; specifically, the 2013-2014 DMMP identified the Student’s school as Stonehedge Elementary School, as opposed to the School, with contact information for the nurse at Stonehedge, as opposed to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX and former work telephone numbers for the complainants.<sup>1</sup>

Based on the foregoing, OCR determined that the District failed to review the Student’s DMMP and ECP with the Student’s school bus driver at the beginning of school year 2014-2015 as required by the Student’s Section 504 Plan. OCR determined that the XXXXX forwarded a copy of the Student’s ECP for school year 2014-2015 to the Transportation Department on September 3, 2014, one day after the first day of school; however, OCR determined that neither the regular bus driver nor the driver of the late bus was provided a copy of the Student’s DMMP for school year 2014-2015, and no staff member reviewed these documents with the bus drivers. Although the bus drivers had copies of the Student’s DMMP for school year 2013-2014, it included outdated and inaccurate information.

On March 3, 2015, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 1. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

With respect to Allegation 2, the complainants alleged that XXXXXXXXXXXXXXXXXXXXXXX discriminated against the Student, on the basis of his disability, by refusing to confirm that the Student’s blood glucose levels were

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<sup>1</sup> All other information in the DMMP for the school year 2013-2014 is identical to the DMMP for the school year 2014-2015.



support their assertion that the Student boarded the bus at dismissal without the health office first receiving and the XXXXX reviewing his blood glucose levels on November 18, 2014, or any other date.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the XXXXX discriminated against the Student, on the basis of his disability, by refusing to confirm that the Student's blood glucose levels were safe before the Student boarded the school bus at the end of each school day, as required by the Student's Section 504 Plan for school year 2014-2015. Accordingly, OCR will take no further action with respect to Allegation 2.

This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainants may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact Richard Anderson, Equal Opportunity Specialist, at (646) 428-3781 or [richard.anderson@ed.gov](mailto:richard.anderson@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Jennifer E. Mathews, Esq.